

Utah Department of Health, Child Care Licensing Program
Background Screening Rule Interpretation Manual

Introduction

This manual has been prepared for child care providers and staff and licensing staff to help ensure statewide consistency in the understanding and enforcement of child care licensing rules. The manual contains the following information:

Rule Text – the text of each rule is printed in black bold font.

Rational / Explanation – Information under this heading explains the reason for each rule, and may also give additional helpful information about the rule.

Enforcement – Information under this heading gives any needed details on how a rule will be enforced, and the noncompliance level(s) of findings to the rule.

Information in the Rationale/Explanation section for most rules contains a reference to “CFOC.” CFOC refers to the book *Caring for Our Children: Guidelines for Out-of-Home Child Care Programs*. This book contains health and safety standards for all types of child care programs. It is published by the American Academy of Pediatrics, the American Public Health Association, and the U.S. Department of Health & Human Services, Maternal and Child Health Bureau. The standards in *Caring for our Children* are generally accepted in the field as best practice standards for health and safety in child care programs. Utah has only implemented a portion of these standards in our child care licensing rules.

When Licensing Specialists find noncompliance with a licensing rule, they issue a Statement of Findings, which is mailed to the provider. The chart below shows the noncompliance levels and findings categories that Licensing Specialists use when issuing Statements of Findings. Throughout this manual, the “Enforcement” information for each rule specifies the noncompliance level(s) associated with Statements of Findings.

Noncompliance Levels	Finding Categories	Technical Assistance	Cited	Repeat Cited
Level 1		Level 1 Technical Assistance	Level 1 Cited	Level 1 Repeat Cited
Level 2		Level 2 Technical Assistance	Level 2 Cited	Level 2 Repeat Cited
Level 3		Level 3 Technical Assistance	Level 3 Cited	Level 3 Repeat Cited

Statements of Findings vary in seriousness, based on the potential or actual harm to children. The chart below shows the consequences Statements of Findings, based on the levels and finding categories from the chart above.

	Result for 1st Instance of Noncompliance	Result for 2nd Consecutive Instance of Noncompliance	Result for 3rd Consecutive Instance of Noncompliance	Result for 4th Consecutive Instance of Noncompliance
Level 1 Noncompliance	Level 1 Cited Statement of Finding, Civil Money Penalty (CMP) Warning, On public record	Level 1 Repeat Cited Statement of Findings, Civil Money Penalty (CMP) Assessed, On public record	Level 1 Repeat Cited Statement of Findings, Civil Money Penalty (CMP) Assessed, On public record	Level 1 Repeat Cited Statement of Findings, Civil Money Penalty (CMP) Assessed, On public record
Level 2 Noncompliance	Level 2 Technical Assistance Statement of Findings, Not on public record	Level 2 Cited Statement of Findings, Civil Money Penalty (CMP) Warning, On public record	Level 2 Repeat Cited Statement of Findings, Civil Money Penalty (CMP) Assessed, On public record	Level 2 Repeat Cited Statement of Findings, Civil Money Penalty (CMP) Assessed, On public record
Level 3 Noncompliance	Level 3 Technical Assistance Statement of Findings, Not on public record	Level 3 Technical Assistance Statement of Findings, Not on public record	Level 3 Cited Statement of Findings, Civil Money Penalty (CMP) Warning, On public record	Level 3 Repeat Cited Statement of Findings, Civil Money Penalty (CMP) Assessed, On public record

Civil Money Penalties (CMP) are only assessed if there are two or more consecutive cited findings to the same rule during the last 12 months or back to the last Annual Announced Inspection.

The one exception to the chart above is if actual harm to a child results from noncompliance with a rule. When this is the case, the category of the Statement of Findings may automatically rise to the cited level for the first instance of noncompliance.

Any substantiated allegation resulting in a Statement of Findings from a complaint investigation, regardless of the level, will be part of the provider's public record.

For any Statement of Findings that is issued or any Civil Money Penalty that is assessed, providers have 30 days after the Statement of Findings is issued and/or the Civil Money Penalty is assessed to appeal the action. The action is not finalized until this appeal period has passed.

This manual will be periodically updated as needed, and is available on the Child Care Licensing website at: <http://health.utah.gov/licensing>

To verify if you have the most current version of the manual, check the date in the bottom left-hand corner of the manual pages with the date of the version currently available on the website.

R430-6-2: DEFINITIONS

Terms used in this rule are defined in Title 26, Chapter 39. In addition:

- (1) **“Applicant”** means a person who has applied for a new child care license or residential certificate from the Department, or a currently licensed or certified child care provider who is applying for a renewal of their child care license or certificate.
- (2) **“Background finding”** means a determination by the Department that an individual:
 - (a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.
 - (b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony misdemeanor.
- (3) **“Covered individual”** means:
 - (a) owners;
 - (b) directors;
 - (c) members of the governing body;
 - (d) employees;
 - (e) providers of care, including children residing in a home where child care is provided;
 - (f) volunteers, excluding parents of children enrolled in the program;
 - (g) all individuals age 12 and older residing in a residence where child care is provided; and
 - (h) anyone who has unsupervised contact with a child in care
- (4) **“Department”** means the Utah Department of Health.
- (5) **“Involved with child care”** means to do any of the following at or for a facility with a child care license or certificate issued by the Department:
 - (a) provide child care;
 - (b) volunteer at a child care facility;
 - (c) own, operate, direct, or be employed at a child care facility;
 - (d) reside at a facility where care is provided;
 - (e) function as a member of the governing body of a child care facility; or
 - (f) be present at a facility while care is being provided, except for parents dropping off or picking up their child, or attending a scheduled event at the child care facility.
- (6) **“Supported finding”** means an individual is listed on the Licensing Information System child abuse and neglect database maintained by the Utah Department of Human Services.
- (7) **“Unsupervised Contact”** means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or employee who has passed a background screening.
- (8) **“Volunteer”** means an individual who receives no form of direct or indirect compensation for providing care.

R430-6-3: SUBMISSION OF BACKGROUND SCREENING INFORMATION

- (1) Each applicant requesting a new or renewal child care license or residential certificate must submit to the Department the name and other required identifying information on all covered individuals.
 - (a) Unless an exception is granted under Subsection (4) below, the applicant shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.
 - (b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

Rationale / Explanation

The purpose of this rule is to ensure that individuals who do not pass a background screening do not work with or have unsupervised access to children in child care facilities and programs regulated by Child Care Licensing, as outlined in Utah Code 26-39-107.

Enforcement

This rule is specifically for background screening documents required with applications. Because licenses and certificates are issued to a specific location, and are not transferrable to a new location, when child care facilities (center or home) change locations, applications for new licenses and certificates are required. New background screening documents for all covered individuals who will be involved with the facility at the new location are required with those applications.

CENTERS, HOURLY CENTERS, AND OUT OF SCHOOL TIME PROGRAMS

For centers, hourly centers, and out of school time programs, individuals who must submit background screening documents ("covered individuals") include:

1. Owners & Members of the Governing Body

Owners are anyone with a 25% or greater share in the business, or anyone with less than a 25% share who is in the center anytime during hours of operation. If a center's or out of school time program's legal structure is a corporation, a state or local government, or a private non-profit agency, and they run other facilities in addition to the child care center or out of school time program (for example, a ski resort, a recreation center, or a domestic violence shelter), the owners and members of the governing board are anyone who performs one or more of the functions listed below.

- A. *They have unsupervised access to the children in care or they are in the facility during hours of operation.*
- B. *They make decisions regarding the day-to-day operations of the facility.*
- C. *They hire and fire child care or out of school time program staff.*
- D. *The child care or out of school time program staff report to them and/or they conduct personnel evaluations of the staff.*
- E. *They are involved in writing the center's or out of school time program's policies and procedures.*

2. Employees

Employees are anyone hired to work for the child care center or out of school time program. For centers or programs located in buildings that also house other activities (for example, a city or county recreation center, a community center, a church, or a school), non-child care employees (those who do not have any duties working with children in care), are not required to submit background screening documents, provided the licensees first submit a written policy explaining how they will ensure that non-child care employees will not have unsupervised access to children in care, including when children in care are in the bathroom.

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If employees are on leave, for example, maternity leave, and are considered employees of the center or program while on leave, their names are to be included on renewal background screening forms while they are on leave. If employees quit and then return to work, or are on leave and not considered employees of the center or program while on leave, they are to submit new initial background screening forms when they return from leave.

3. **Providers of care**

Providers of care are anyone who provides direct care to one or more children in the center or program.

4. **Volunteers, except parents of children enrolled**

Volunteer are any volunteer who works with the children or is in the facility when care is being provided to children. When a parent who volunteers at a facility receives compensation (either monetary or free child care) for volunteering, he/she is considered an employee under #2 above. A parent of an enrolled child who has not passed a background screening may not have unsupervised access to any child in care except his/her own child.

Volunteers include students completing a practicum for a high school or college course that involves working in a regulated child care facility or out of school time program, unless the requirement is that the student observe the children and not interact with them. If the student only observes the children and does not interact with them, he/she does not need to submit background screening documents. If a student is being paid to complete a practicum, he/she is considered an employee under #2 above.

5. **Anyone who has unsupervised contact to a child in care**

HOME CHILD CARE

For licensed family and residential certificate providers, individuals who must submit background screening documents ("covered individuals") include:

1. **All individuals age 12 and older who reside in the home**

An individual is considered to "reside" in the home if he/she stays continuously in the home for 2 weeks or longer. This includes individuals who rent space or an apartment in the provider's home.

2. **Providers of care**

Providers of care are anyone who provides direct care to one or more children in care.

3. **Employees**

Employees are anyone hired to work for the provider, including substitutes.

4. **Volunteers, except parents of children enrolled**

Volunteers are any volunteer who works with the children. A parent of an enrolled child who has not passed a background screening may not have unsupervised access to any child in care except his/her own child.

5. **Anyone who has unsupervised contact to a child in care**

When Licensees/Certificate Holders are landlords and rent out part of their house, the renters do not need approved background screening forms when all of the following conditions are met:

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- A. *The rented parts of the house have separate outside entrances and there are no interior doorways (inside the house) between the rented parts and the rest of the house.*
- B. *There are signed rental/lease agreements between the Licensees/Certificate Holders and the renters. (Licensing staff must see these rental agreements.)*
- C. *The rented parts of the house have separate mailing addresses and mailboxes from the rest of the house. (When there is not a clear separation of mailboxes, Licensing staff must verify this by seeing mail addressed to the Licensees/Certificate Holders and mail addressed to the renters.) A post office box is not considered a separate mailing address.*
- D. *There is no potential for the renters to have unsupervised access to the children in care, including when the children are playing outdoors. To meet this criteria, no child in care (including school-age children) can be outside without the Licensees/Certificate Holders or approved providers also being outside.*

When all of the above conditions are not met, approved background screening forms are required for renters in the houses of Licensees/Certificate Holders.

When Licensees/Certificate Holders rent apartments in houses and are not the house owner, individuals living in the part(s) of the house not rented by Licensees/Certificate Holders do not need approved background screening forms when all of the following conditions are met:

- A. *The rented parts of the house have separate outside entrances and there are no interior doorways (inside the house) between the rented parts and the rest of the house.*
- B. *There are signed rental/lease agreements between house owners and Licensees/Certificate Holders renting the apartment. (Licensing staff must see these rental agreements.)*
- C. *The rented apartments have separate mailing addresses and mailboxes from the rest of the house. (When there is not a clear separation of mailboxes, Licensing staff must verify this by seeing mail addressed to the Licensees/Certificate Holders and mail addressed to the house owners.) A post office box is not considered a separate mailing address.*
- D. *There is no potential for the individuals living in the parts of the house not rented by Licensees/Certificate Holders to have unsupervised access to the children in care. To meet this criteria, no child in care (including school age children) can be outside without the Licensees/Certificate Holders or approved providers also being outside.*

When all these conditions are not met, individuals living in parts of houses not rented by Licensees/Certificate Holders need background screening forms.

Seasonal employees who return to work when the facility re-opens can be listed on the renewal background screening forms, unless during the time the facility was closed, they have moved from Utah and lived in another state and then returned to Utah. If that is the case, the employee must submit an initial background screening form with fingerprints when returning to work.

COMPLETING AND SUBMITTING REQUIRED BACKGROUND CLEARANCE FORMS

- 1. *For applications for new licenses and certificates:*
 - A. *The covered individual is required to complete and sign his/her portion of the background screening form.*
 - B. *The applicant is required to complete and sign his/her portion of the background screening form.*
- 2. *For applications for renewal licenses and certificates:*
 - A. *The licensee or certificate holder is required to fill out the renewal background screening forms and*

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disclosure forms and submits them with his/her renewal application.

- B. *Each individual listed on the renewal background screening form must also be listed on the disclosure form. The disclosure form gives consent for Licensing staff to conduct a background screening each year. It is also the place where the covered individual must verify that during the past year (since their last background screening), he/she has not been convicted of a crime or had a supported finding of child abuse.*

- (2) **The applicant shall state in writing, based upon the applicant's information and belief, whether each covered individual:**
- (a) **has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor;**
 - (b) **has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor;**
 - (c) **has ever had a supported finding by the Department of Human Services, or a substantiated finding from a juvenile court, or abuse or neglect of a child.**
- (3) **Within five days of a new covered individual beginning work at a child care facility or moving into a licensed or certified home, or a child turning 12 who resides in the facility where care is provided, the licensee or certificate holder must submit to the Department the name and other required identifying information for that individual.**
- (a) **Unless an exception is granted under Subsection (4) below, the licensee or certificate holder shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.**
 - (b) **The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.**

Rationale / Explanation

The purpose of this rule is to ensure that individuals who do not pass a background screening do not work with or have unsupervised access to children in child care facilities and programs regulated by Child Care Licensing.

Enforcement

This rule is for providers who have a license or certificate. It requires them to submit required background screening documents within 5 working days of an individual's first day of work. Home providers are also required to submit background screening documents within 5 days of a new person age 12 or older moving into the home and within 5 days of any child residing in the home turning 12.

A fingerprint card is required for any new covered individual who is 18 years of age or older who has not resided in Utah continuously for the past five years.

1. *The covered individual must obtain an acceptable set of fingerprints from local law enforcement or Public Safety and submit them with the fingerprint fee processing of \$36.50 per person.*
2. *After an initial FBI clearance, a covered individual does not need to have another FBI screening unless he/she has moved from Utah and established residency in another state and then returned to Utah.*

The postmark date on the envelope is used to determine if the required forms were submitted within 5 working days.

Initial background screening documents are required for all individuals who work at the facility, regardless of how long they work there. This includes individuals who are employed for less than 5 days.

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Unless they have moved from Utah and lived in another state and then returned to Utah, employees of seasonal programs who return to work when the facility re-opens can be listed on the renewal background screening forms. When the employee moved from Utah and lived in another state and then returned to Utah, he/she must submit an initial background screening form with fingerprints when the facility re-opens.

Center owners/directors are required to keep a copy of the initial cleared background screening form for staff hired as of 12/30/06.

Program Guests

*Providers sometimes bring in outside guests to offer special programs to the children in care. For example, a provider may bring in someone to put on a puppet show or a play or to give dance lessons to the children. In these cases, the guest does **not** need a background screening, **unless** the provider leaves the guest alone with children. A background screening is needed when the guest has unsupervised access to children in care.*

When employees quit and then come back to work at the same facility, regardless of how long they were not employed, they are considered new employees and are required to submit new initial background screening forms within 5 days of returning to work at the facility.

If a owner has more than one facility and staff work in more than one of these facilities, the staff member does not need to have initial and renewal background screenings done at each facility. They may photocopy their background screening forms from one facility and keep the copies at the other facilities. This also applies to owners and governing board members.

Level 1 Noncompliance: If background screening documents were not submitted.

Level 2 Noncompliance:

- If background screening documents were submitted but not within the required five days.*
- If background screening documents were submitted within the required 5 days but were not complete.*
- If background screening documents were returned for completion and not sent back within 14 days of being returned.*

(4)(a) Fingerprint cards are not required if:

- (i) the covered individual has resided in Utah continuously for the past five years, or is less than 23 years of age, and has resided in Utah continuously since the individual's 18th birthday; or**
- (ii) the covered individual will only be involved with child care in a facility that was licensed or certified prior to 1 July 2013.**

(4)(b) A covered individual has previously submitted fingerprints under this section for a national criminal history record check and has resided in Utah continuously since that time.

Rationale / Explanation

The purpose of this rule is to ensure that individuals who do not pass a background screening do not work with or have unsupervised access to children in child care facilities and programs regulated by Child Care Licensing, as outlined in Utah Code 26-39-107.

Enforcement

A fingerprint card is required for covered individuals who are 18 years of age or older, and who have not resided in Utah continuously for the past five years.

R430-6-3: SUBMISSION OF BACKGROUND SCREENING INFORMATION

1. *The covered individual must obtain an acceptable set of fingerprints from local law enforcement or Public Safety and submit them to Licensing with the fingerprint fee processing fee of \$36.50 per person.*
2. *After an initial FBI clearance, a covered individual does not need to complete another FBI screening unless they have moved from Utah and lived in another state and then returned to Utah. This includes college students who leave the state for college and return to Utah.*

When fingerprints are required, they must be submitted with the background screening form within 5 working days of the individual beginning work or moving into the home. If the fingerprints are mailed, Licensing staff will use the postmark date on the envelope to determine if the required documents were submitted within the 5 working days.

R430-6-4: CRIMINAL BACKGROUND SCREENING - REPORTING NEW ARRESTS, CHARGES, AND CONVICTIONS

- (9) All licensees, certificate holders, and covered individuals must report to the Department any felony or misdemeanor arrest, charge, or conviction of a covered individual within 48 hours of becoming aware of the arrest warrant, arrest, charge, or conviction. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

Rationale / Explanation

The purpose of this rule is to ensure that individuals who do not pass a background screening do not work with or have unsupervised access to children in child care facilities and programs regulated by Child Care Licensing.

Enforcement

This rule requires Licensees and Certificate Holders to report to the Department within 48 hours whenever a covered individual working, volunteering, or residing in the facility is arrested, charged with a crime, or convicted of a crime. This means Licensees and Certificate Holders must report to the Department within 48 hours of becoming aware of such incidents. Licensees and Certificate Holders are not out of compliance if they fail to report such incidents because they are unaware of the incident.

Level 1 Noncompliance: If the arrest, charge, or conviction was not reported.

Level 2 Noncompliance: If the arrest, charge, or conviction was reported but not within 48 hours.

R430-6-6: CHILD ABUSE AND NEGLECT BACKGROUND SCREENING

- (4) All licensees, certificate holders, and covered individuals must report to the Department any supported finding on the Department of Human Services Licensing Information System concerning a covered individual within 48 hours of becoming aware of the supported finding. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

Rationale / Explanation

The purpose of this rule is to ensure that individuals who do not pass a background screening do not work with or have unsupervised access to children in child care facilities and programs regulated by Child Care Licensing, as outlined in Utah Code 26-39-107.

Enforcement

This rule requires Licensees and Certificate Holder to report, within 48 hours of becoming aware of the finding, to Licensing staff whenever a covered individual working, volunteering, or residing in the facility has a supported finding of child abuse or neglect with the Division of Child and Family Services, Department of Human Services. . Licensees and Certificate Holders are not out of compliance if they fail to report such a finding because they are unaware of the incident.

Level 1 Noncompliance: If the finding was not reported.

Level 2 Noncompliance: If the finding was reported, but not within 48 hours.